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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,576	02/11/2004	Krzysztof Sowinski	760-102 DIV	2790
23869 7590 12/13/2007 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
			EXAMINER BUTLER, PATRICK	
			ART UNIT 1791	PAPER NUMBER
			MAIL DATE 12/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/776,576

Applicant(s)

SOWINSKI ET AL.

Examiner

Patrick Butler

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20040211</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 6-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to Claim 4, the "increased longitudinal elongation and radial expansion and recovery properties" are clear which tubular products are being compared between the original, intermediate, and final tubular products. For purposes of examination, the Examiner assumes that the properties are increased in the final tubular structure from the properties of original tubular structure. Claims 6-12 are rejected via their dependency.

With respect to Claims 6-11, the "tubular structure" is not clarified to be the original, intermediate, or final tubular products. For purposes of examination, the Examiner assumes that the "tubular structure" is the final product.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29

USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 24 of U.S. Patent No. 6,716,239 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 24 of U.S. Patent No. 6,716,239 B2 claims a method of subjecting a longitudinally expanded polytetrafluoroethylene tubular structure to longitudinal foreshortening and radially expansion wherein the orientation of the fibrils are changed. Although Claim 24 of U.S. Patent No. 6,716,239 B2 does not explicitly claim placing the tube circumferentially on an expansion mechanism, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the method of Claim 24 of U.S. Patent No. 6,716,239 B2 with a circumferential stretching mechanism in order to achieve the steps of foreshortening and expanding.

Claims 1 and 14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of copending Application No. 11/026,657. Although the conflicting claims are not identical, they are not patentably distinct from each other because, with respect to instant Claim 1, Claim

12 of copending Application No. 11/026,657 claims providing an ePTFE tube, longitudinally expanding the tube, and transversely expanding the tube. With respect to instant Claim 14, Claim 2 of copending Application No. 11/026,657 claims providing an ePTFE tube, expanding the tube, and sintering the tube (heat treating the tube).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by House (US Patent No. 4,877,661).

With respect to Claim 1, House teaches making a PTFE tube (see col. 2, lines 55-60) by length stretching a PTFE tube that has longitudinal axes of the fibrils that are all substantially parallel (longitudinally stretching said polytetrafluoroethylene tube to form an expanded polytetrafluoroethylene tube, wherein said expanded polytetrafluoroethylene tube is comprised of fibrils oriented in a longitudinal direction of said tube and nodes oriented in a circumferential direction of said tube) (see fig. 1 and col. 2, line 61 through col. 3, line 12) and then compressing, in a direction parallel to but opposite to the direction in which it was originally expanded by stretching, over a mandrel, which would necessarily cause longitudinal foreshortening and radial

expansion (placing the expanded polytetrafluoroethylene tube circumferentially exterior to a longitudinal foreshortening and radially expanding mechanism, wherein radial pressure from the foreshortening mechanism radially expands said ePTFE tubular structure) (see col. 3, lines 24-29 and col. 6, lines 47-53), which makes the fibrils wavy (reorients fibrils non-longitudinally) (see fig. 2 and col. 4, lines 21-24).

With respect to Claim 2, the compression was done at 100-380 °C (200-720 °F) (see col. 6, lines 57-63 and Table 1, col. Oven Temp. °C for samples 1-5).

With respect to Claim 3, the fibrils are made wavy, which would require rotation at the nodes to maintain continuity from node to wave to node (reoriented fibrils are hingeably rotated about said nodes) (see fig. 2 and col. 4, lines 21-24).

With respect to Claim 4 and 6-11, House's method of making a PTFE tube would result in a final tubular structure whose longitudinal elongation and radial expansion and recovery properties are increased from the properties of original tubular structure (Claim 4 and 12) and whose longitudinal (Claims 6-8) and radial (Claims 9-11) expansion properties are as claimed principally because House's method uses the same steps as claimed to achieve the final structure.

With respect to Claim 5, the stretching does not result in length change of the fibrils since their only appearance change is being bent or wavy in microscopic representation (see col. 4, lines 16-31 and figs. 1 and 2).

With respect to Claim 13, the nodes' lengths would necessarily expand during the radial pressure principally because they are within the same tube as claimed and subjected to the same steps as claimed.

With respect to Claim 14, House teaches that the stretched tube is heated while restrained to a temperature above its crystalline melt point and held there for a period of time (suspending and heating said PTFE tube after longitudinal expansion and prior to placing said tube on said expanding mechanism) (see col. 3, lines 3-12).

With respect to Claim 15, House's heating step would affect the tube's structural integrity as claimed principally because House's method uses the same steps as claimed to achieve the final structure.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is (571) 272-8517. The examiner can normally be reached on Mon.-Thu. 7:30 a.m.-5 p.m. and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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